



DEPARTMENT OF VETERANS AFFAIRS
Deputy Assistant Secretary for Acquisition and Materiel Management
Washington, DC 20420

IL 049-04-04
February 24, 2004

OFFICE OF ACQUISITION AND MATERIEL MANAGEMENT INFORMATION LETTER

TO: Under Secretaries for Health, Benefits, and Memorial Affairs; Assistant Secretary for Management; Chief Facilities Management Officer, Office of Facilities Management; Veterans Integrated Service Network Directors; Directors, VA Medical Center Activities, Domiciliaries, Outpatient Clinics, Medical and Regional Office Centers, and Regional Offices; Directors, Denver Distribution Center, Automation Center, Records Management Center, VBA Benefits Delivery Center and VA Health Administration Center; and the Executive Director and Chief Operating Officer, VA National Acquisition Center

ATTN: Heads of the Contracting Activity, VA Contracting Officers, Purchase Card Holders, and All Other VA Employees Involved with Acquiring Supplies and Services

SUBJ: Implementing the Set-Aside Provisions of Public Law 108-183 for Service-Disabled Veteran-Owned Small Business Concerns

1. This Information Letter (IL) provides guidance to contracting officers concerning the award of contracts to small business concerns owned and controlled by service-disabled veterans. On December 16, 2003, President Bush signed Public Law No. 108-183, the Veterans Benefits Act of 2003. Section 308, Procurement Program for Small Business Concerns Owned and Controlled by Service-Disabled Veterans, permits contracting officers to restrict competition to small business concerns owned and controlled by service-disabled veterans if the contracting officer has a reasonable expectation that not less than two small business concerns owned and controlled by service-disabled veterans will submit offers and that the award can be made at a fair market price. In addition, the law authorizes sole source awards to service-disabled veteran-owned small businesses (SDVOSBs) under certain circumstances. Pending changes to the Federal Acquisition Regulation (FAR), contracting officers may immediately use the guidance in this information letter to execute contract actions with SDVOSBs.

2. This authority to set aside acquisitions does not override existing acquisition law or regulation, including the requirements to purchase products from Federal Prison Industries, Inc., and products and services from the Committee for Purchase from People who are Blind or Severely Disabled (see FAR Parts 8 and 19). However, when using Federal Supply Schedule (FSS) contracts, contracting officers should consider the SDVOSB status of FSS contractors when selecting contractors for competition for award of an FSS order or blanket purchase agreement.

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3. If a required source cannot be located, contracting officers may set aside an acquisition and restrict competition to SDVOSBs if the contracting officer has a reasonable expectation that not less than two SDVOSBs will submit offers and that the award can be made at a fair market price. In performing market research in accordance with FAR Part 10 to locate SDVOSB sources, the contracting officer must use the VetBiz Vendor Information Pages (VIP), located on the Internet at <http://www.vetbiz.gov>, as one of the sources for assessing whether there are two or more SDVOSBs that can meet VA requirements. Companies that are registered as SDVOSBs in this database have stipulated that the firm is at least 51 percent owned and controlled by service-disabled veterans, as defined in the FAR, and that the business is currently small by federal size standards. In addition, contracting officers must use additional market research sources, such as the Central Contractor Registration (CCR) located at <http://www.ccr.gov>. Contracting officers should register any SDVOSB located in other sources in VetBiz VIP by entering, at a minimum, the company's name and contact information.

4. If, after conducting a thorough market search, the contracting officer cannot locate two or more SDVOSBs that can meet VA's requirements, the contracting officer may consider sole source award to a single SDVOSB, provided the acquisition meets the following requirements. Section 36(a) of Public Law 108-183 permits a contracting officer to award a sole source contract to any small business concern owned and controlled by a service-disabled veteran (or veterans), if –

(a) Such concern is determined to be a responsible contractor with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more small business concerns owned and controlled by service-disabled veterans will submit offers for the contracting opportunity; and

(b) the anticipated award price of the contract (including options) will not exceed –

(1) \$5,000,000, in the case of a contract opportunity assigned a North American Industrial Classification Code for manufacturing; or

(2) \$3,000,000 in the case of any other contract opportunity; and

(c) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

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5. Set-asides for SDVOSBs and proposed sole source awards to SDVOSBs are not exempt from the requirements of FAR 5.201 and must be synopsisized in VA's Business Opportunities System (BOS) if they meet the requirements of FAR 5.101 and provided none of the other exemptions in FAR 5.202 apply. Any protests regarding the small business or socioeconomic status of an offeror shall be handled in accordance with FAR 19.302.

6. In any competition restricted to SDVOSBs, the contracting officer shall include the following statement in the electronic posting system and on the solicitation documents:

Notice of Set-Aside for Service-Disabled Veteran-Owned
Small Business Concerns

(a) The proposed contract is 100% set aside for award to service-disabled veteran-owned small business concerns. Offers or quotations from other than service-disabled veteran-owned small business concerns will not be considered and shall be rejected.

(b) *Definitions.* As used in this provision:
"Service-disabled veteran-owned small business concern"—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

7. For any solicitation proposed for sole source award to a SDVOSB, the contracting officer shall include the statement in paragraph 6 above as well as the following statement in the electronic posting system and on the solicitation documents:

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Sole Source Award

The proposed contract action is for supplies or services for which the Department of Veterans Affairs (VA) intends to solicit and negotiate with only one small business concern that is owned and controlled by one or more service-disabled veterans under the authority of section 308 of Public Law 108-183. Interested persons who are service-disabled veteran-owned small businesses may identify their interest and capability to respond to the requirement or submit proposals. This notice of intent is not a request for competitive proposals. However, all proposals received within _____ days after date of publication of this synopsis will be considered by VA. A determination by VA not to compete this proposed contract based upon responses to this notice is solely within the discretion of VA. Information received will normally be considered solely for the purpose of determining whether to conduct a competitive procurement among small business concerns owned and controlled by one or more service-disabled veterans.

8. Until such time as the Federal Procurement Data System – Next Generation (FPDS-NG) is modified to include a reporting field for an acquisition that is set aside for award to a SDVOSB, contracting officers shall report the acquisition to FPDS-NG as being from a SDVOSB and shall provide a copy of the award announcement to VA's Office of Small and Disadvantaged Business Utilization electronic mailbox, OSDBU@mail.va.gov, within 3 days of contract award.

9. Thank you for your continuing support of the Federal Veterans Entrepreneurship Program. We strongly encourage you to use the above authority to increase acquisitions made from SDVOSBs. Please direct any questions regarding this guidance to Don Kaliher, Acquisition Policy Division (049A5A), at (202) 273-8819, or to Gail Wegner, Office of Small and Disadvantaged Business Utilization, Center for Veterans Enterprise (00VE), at (202) 303-3260, ext. 5239.

/s/C. Ford Heard
Director
Acquisition Resources Service

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